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are undervalued more than poor ones, land more than buildings, and vacant land more than land in use. There are, further, the familiar proofs of evasion throughout the state. This is a statement old in substance with a variation as to specific facts. Every one knows the dishonesty and injustice of our tax system, but this does not forbid a fresh demonstration of the evil. Only tedious reiteration can persuade to action an inert public conscience which has long ago been passively persuaded.

A. P. W.

The Mark in Europe and America. A Review of the Discussion on Early Land Tenure. By ENOCH A. BRYAN. Boston: Ginn & Co., 1893. 8vo. pp. vii + 164.

MR. BRYAN has rushed in where a more cautious student would fear to tread. It is impossible for a student in the brief space of "a year of rest from his regular duties" to master the immense literature upon the early German village community thoroughly enough to make even "a small contribution to the further consideration of the problem." Moreover, the author approaches his subject in a way calculated to irritate the reader. He tells us that "an historical hypothesis, though it may after a time prove untenable, possesses at any rate the merit of forming a central point for investigation and discussion. But there is a corresponding danger. If once it is fixed in the mind and accepted as standing for a reality, subsequent facts are interpreted in its light and then in turn made to reflect light upon it" (p. 1), and then he proceeds to advocate to the best of his ability the theories of the Cœlanges-Seebohm-Ashley school, as if they were vivid realities.

The question of the social organization of the primitive German village community falls into two parts: (1) The relation of the people to the land; (2) The relation of the people to each other. Did the early Germans hold land in individual or in common ownership? Did the early Germans start free and become serfs, or did they gradually rise out of a condition of serfdom? The former question most occupies our attention in the work before us. Mr. Bryan has no hesitation in expressing his own opinion. He says that the evidence "establishes beyond question the existence of individual landed property from the fourth or fifth century to the present, with a strong probability, to say the least, of its existence in the *Germania* of Tacitus. . . . The evi-

dence is weak in not being able to *prove* a negative, that is, that free communal village groups did not also exist. But it is well to note the entire absence of any proof of communal ownership in Tacitus" (pp. 72-3).

This statement is based, of course, upon the well-known passages in Tacitus, of which Mr. Bryan gives his own—or rather Mr. Seebohm's—translation. No one can declare him positively wrong, for no one can pretend fully to understand Tacitus, because of variations in the text, and the further fact that it is uncertain whether he is speaking of a fairly permanent or a constantly changing occupation of the land.

But there is another sort of evidence, that derived from a study of primitive society, which has been wholly ignored. It is possible, upon such evidence, to build up a theory holding an intermediate place between the two schools, and yet in through accord with the statements of Tacitus. According to this view the primitive Germans lived in families, *i. e.*, consanguine groups, *and held land in families*. That is, there was a common ownership within a clan-group, but not of the community at large; this ownership, however, was confined to the arable land upon which the tillage was shifted (?), while the pasture land was the common property of the Mark.¹

This view is adopted after what is believed to be a more perfect conception of the character of primitive society. Starting with the rational premise that the ethical nature of man was low in the beginning, that the relation between the sexes was probably indiscriminate in very early times, it is argued that as man's moral vision enlarged, the tribe was split into groups of closer affinity, until finally the family resulted. In other words that the state results from the segregation of the tribe and that the family is the apex and not the base of organized society, *i. e.*, the state. The steps of development might be given thus: (1) Tribal community which broke into (2) the village community, which broke into (3) the joint-family or consanguine group, which broke into (4) severalty and the individualism of the modern family.²

When we come to apply this hypothesis to the primitive Germans,

¹NASSE, *Land Community in the Middle Ages* (Cobden Club, 1871), has pointed out that "arable land easily became private property. Meadows, being neither cultivated nor manured, only used for pasturage—easily commonable" (pp. 11, 12).

²Cf. LAFARGUE, *Evolution of Property* (London, 1890), p. 49. GOMME, *Village Communities*, pp. 39, 43.

it meets with encouraging reënforcement. Even the advocates of the "biological theory" admit that clear evidence of a patriarchal stage among the Germans is wanting. Waitz—a knowledge of whose writings Mr. Bryan seems to be innocent of, as also of the works of Eichhorn, Bethmann-Hollweg, Arnold, Heusler, von Below, Sohm, Inama-Sternegg and Lamprecht—explains this absence by the supposition that local influences gained the mastery in the very earliest stages.¹ Moreover, it is historically possible from the words of Cæsar and Tacitus to account for the absence of any patriarchal stage. Cæsar (*De Bello Gallico*, book vi. chap. xxii.), uses the words *gentes* and *cognationes*, while Tacitus (*Germania*, chap. vii.), one hundred and fifty years later, employs the terms *familiae et propinquitates*. Are these words merely to express a general idea? Hardly; Tacitus was too much a master of style, and had too keen a discrimination in the use of synonyms to use words loosely. Taking the time-element, and other statements of Tacitus into consideration, the Germans must have advanced a degree. Therefore, upon the hypothesis above given, the words of Tacitus indicate that the Germans had passed out of the tribal wandering stage which Cæsar depicts, and were united upon the basis of village communities. The expressions seem to indicate the remains of a prior gentile organization which at this time was giving place to the Mark or local district, as the basis of a still imperfect political system.²

This is strengthened by a comparison with the other parts of Tacitus. In chapter xvi. he says: *suam quisque domum spatio circumdat*, which would seem to imply fixity. Again, that a migration of the tribe should take place annually is almost incredible, especially since it is certain that the Germans had made a considerable advance since the time of Cæsar. Moreover, with the rude means of agriculture at their command, the Germans would be likely to take advantage of the portion of the soil subdued, for with ground sparsely settled and imperfectly cultivated,³ exhaustion of the soil could not have taken place rapidly.

In substantiation of this intermediate view it is well to remember the tenacity of the clan relation. As late as the time of Athelstan (924) it was the duty of the *kindred* to see that each of their lordless men should find a lord; and even to the last the Anglo-Saxon viewed a feud as being a concern of the whole sept or kindred. Evidence of

¹ *Deutsche Verfassungsgeschichte*, vol. i. p. 51.

² Cf. MORGAN, *Ancient Society* (New York, 1877), p. 360.

³ THORPE, *Ancient Laws and Institutes of England*, vol. i. p. 20, Lex. 2.

this solidarity is apparent in the *Leges Henrici Primi*.¹ The change from tribal communism to the private family relation could hardly have taken place without the transitional condition of a joint-family relation. This is a necessary step in the process of development. A law of the Merovingians of 574 first made children instead of clansmen heirs to one who died.

An inquiry into the origin of property sheds light upon the question. The early German did not busy his brain with abstract conceptions. What was not part of his person was for use of the group to which he was related. "At first the clan was the common family of all its members. Afterwards there came to exist private families having interests distinct from those of the clan, considered as an aggregate of a number of families. The communal territory of the tribe was then parcelled out so as to form the collective property of each family."²

There is much evidence to make us believe that the Germans of the fourth and fifth centuries were in the intermediate stage between communism and holding in severalty. This conception squares, too, with the words of Tacitus³—or at least there is nothing against interpreting him to mean the "joint-undivided family" and the "village community."

In the face of the evidence above indicated, and which is not dwelt upon in the French and English works which alone he seems to have consulted, Mr. Bryan advances an opinion which, if considered as his own, derived from his own research, must be pronounced superficial. He believes "beyond question" in "the existence of individual landed property from the fourth or fifth century to the present, with a strong probability, to say the least, of its existence in the Germany of Tacitus" (p. 72).

Two thoughts are forced upon the mind as the result of reading this book: One is that the author is not nearly competent as yet, even to present the views of others, let alone to venture upon an independent judgment. The other is that he has wandered far from the right path of the historian, who should be of a judicial mind, and has allowed his prejudices to predetermine his opinions.

JAMES WESTFALL THOMPSON.

¹ PALGRAVE, *English Commonwealth*, vol. ii. p. 112.

² LAFARGUE, p. 18.

³ Nullis Germanis populis urbes habitari, satis notum est ne pati quidem inter se junctas sedes. Colunt discreti et diversi, ut fons, ut campus, ut nemus placuit. (chap. xvi.)

Cf. BETHMANN-HOLLWEG, vol. iv. p. 78.